

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Feb 11, 2021**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARTHA OFELIA NARANJO-  
CISNEROS,

Defendant.

No. 2:20-cr-00094-SMJ-1

**ORDER GRANTING  
DEFENDANT'S MOTION TO  
SUPPRESS**

In a related case, Defendant Jose Contreras-Aguilar sold drugs to a confidential informant, and officers afterward followed him to a house in Warden, Washington. *See generally United States v. Contreras-Aguilar*, No. 2:20-cr-0092-SMJ. The lead detective then obtained and executed a search warrant on that home. The initial warrant authorized the search and seizure of (1) Contreras-Aguilar, (2) the prerecorded “buy money” used in the transaction, and (3) documents tending to establish dominion and control of the location to be searched and of any items to be seized. But during the search, officers also found guns, drugs, money, and other contraband; the lead detective thus obtained an amended warrant for these items. The searched residence belonged to Defendant Martha Ofelia Naranjo-Cisneros.

1 During the execution of the search warrants, officers obtained incriminating  
2 statements from Naranjo-Cisneros and found contraband, including a handgun,  
3 linked to her.

4 Naranjo-Cisneros moves to suppress all evidence, challenging the warrant on  
5 Fourth Amendment grounds, and cites this Court's ruling in *Contreras-Aguilar*.  
6 ECF No. 38, 42. The Government opposes the motion. ECF No. 40. The parties  
7 stipulated to incorporate the record developed in *Contreras-Aguilar* and requested  
8 that the Court decide Naranjo-Cisneros's motion without further testimony or  
9 argument. ECF Nos. 44, 45.

10 For the reasons discussed in *Contreras-Aguilar* and supplemented below, this  
11 Court grants Naranjo-Cisneros's motion to suppress.

## 12 BACKGROUND

13 In 2018, a confidential informant ("CS-1") notified Moses Lake Police  
14 Department ("MLPD") Detective Curt Ledeboer that Contreras-Aguilar was  
15 trafficking narcotics in Grant County, Washington. ECF No. 40-1 at 2. At Detective  
16 Ledeboer's direction, CS-1 bought drugs from Contreras-Aguilar. *Id.* But before  
17 Detective Ledeboer could complete his investigation, Contreras-Aguilar turned  
18 himself in on an outstanding DUI warrant, and immigration authorities apparently  
19 removed him from the United States. *See id.*

20 About two years later, in January 2020, a different confidential informant

1 (“CS-2”) notified Detective Ledeboer that the Contreras-Aguilar had returned to  
2 Washington and had resumed trafficking narcotics. *See id.* Detective Ledeboer set  
3 up another controlled buy, once again targeting Contreras-Aguilar. *See id.* Officers  
4 gave CS-2 prerecorded buy money, which CS-2 then used to buy methamphetamine  
5 from Contreras-Aguilar. *Id.* at 2–3. The affidavit merely states, “[u]pon completion  
6 of the controlled purchase CI 2 provided your affiant with a quantity of narcotics  
7 portrayed to CI 2 as methamphetamine.” *Id.* at 2. The affidavit recites no facts or  
8 observations about the controlled buy from either the officers who ostensibly  
9 observed the transaction or the confidential informant who bought the drugs. *See id.*

10 After CS-2 completed the transaction, officers followed Contreras-Aguilar to  
11 a house in Warden, Washington. *Id.* at 3. Because Contreras-Aguilar drove directly  
12 to the Warden residence, Detective Ledeboer stated that he believed there was  
13 “probable cause that your affiant will recover the MLPD controlled buy money  
14 utilized to make the controlled purchase of methamphetamine. The recorded serial  
15 numbers on the US currency from the controlled buy were M1324158737B,  
16 E1308981539A, MF22238782A, and HBI 7290977D.” *Id.* at 3. The affidavit does  
17 not recite the amount or denominations of the U.S. currency used to purchase the  
18 drugs. *See id.*

19 Detective Ledeboer also stated that “INET detectives and members of Moses  
20 Lake Police department [were] on surveillance at [the Warden residence] and the

1 vehicle utilized by Contreras during the controlled purchase [was] . . . parked at the  
2 residence. Based on those factors[,] I believe it is probable that Contreras is within  
3 the residence.” *Id.* The affidavit does not state whether officers observed Contreras-  
4 Aguilar entering the home. *See id.* The affidavit recites no other facts or  
5 observations about the Warden residence or Contreras-Aguilar’s connection to the  
6 location. *See id.*

7 Detective Ledeboer obtained a search warrant for the residence. *See id.* The  
8 warrant authorized the search and seizure of:

- 9 • “The person of Jose Ignacio Contreras-Aguilar . . . Contreras is a Hispanic  
10 male, light brown hair approximately 5’06” and 160 lb,”  
11 • “Moses Lake Police Department pre-recorded buy money bearing serial #’s  
12 MB24158737B, EB08981539A, MF22238782A, HB17290977D,”<sup>1</sup> and  
13 • “Documents tending to establish dominion and control of the location to be  
14 search[ed] and of any items seized.”

15 *Id.* at 1.

16 Several law enforcement agencies helped MLPD execute the search warrant.  
17 Tr. (Dec. 11, 2020). After law enforcement entered the residence, they opened a  
18 bedroom door and immediately located Contreras-Aguilar. *Id.* Detective Ledeboer

19 \_\_\_\_\_  
20 <sup>1</sup> Although the warrant and incorporated affidavit did not specify the amount or  
denominations of U.S. currency, Detective Ledeboer testified that they were  
searching for four \$100 bills. Tr. (Dec. 11, 2020).

1 gave him verbal commands to come out of the bedroom with his hands up, and he  
2 complied with those commands. *Id.* Detective Omar Ramirez testified that he  
3 handcuffed Contreras-Aguilar and escorted him outside so that the other officers  
4 could continue the initial protective sweep of the house. *Id.* According to Ramirez,  
5 Contreras-Aguilar appeared to be in shock or confused. *Id.* He was panting a bit,  
6 breathing hard, and sweating profusely, so Detective Ramirez called an ambulance.  
7 *Id.* Once a medical team arrived, they moved Contreras-Aguilar back inside the  
8 home and sat him on the couch. *Id.* Detective Ramirez searched him for weapons  
9 and found a wallet (and possibly a phone, though Detective Ramirez could not  
10 remember at the hearing). *Id.* He removed the wallet but did not initially search it  
11 for the prerecorded buy money. *Id.* Detective Ledeboer likewise testified that he did  
12 not search the wallet during the initial search incident to arrest. *Id.*

13       Officer Jason Mitchell searched the bedroom where officers had found  
14 Contreras-Aguilar. *Id.* He found a purple Crown Royal whiskey bag hanging on the  
15 bedroom wall—it was cinched tightly with a drawstring. *Id.* He removed it from the  
16 wall, opened it, and found a crystalline substance inside that he believed was  
17 methamphetamine. *Id.* He afterward found a zipped-up guitar case underneath the  
18 bed. *Id.* After pulling it out from underneath the bed and unzipping it, he found an  
19 assault rifle inside. *Id.* Officer Mitchell alerted Detectives Ledeboer and Ramirez  
20 that he had found these items. *Id.* Detective Ramirez photographed the items, and

1 Detective Ledebouer obtained an amended search warrant. *Id.*

2 Detectives Ledebouer and Ramirez ultimately found the prerecorded buy  
3 money in Contreras-Aguilar's wallet. *Id.* But that discovery occurred only after the  
4 search team had already found the guns, drugs, money, and other contraband. *Id.*

5 The parties stipulated and agreed that the following facts are true and  
6 accurate:

7 During the execution of the initial search warrant on January 7, 2020,  
8 Sergeant Dean Gaddis of the Moses Lake Police Department, while  
9 searching for the items specified in the initial search warrant, found the  
10 firearm alleged in the Indictment, a Davis Industries model P-380, .380  
11 caliber pistol, bearing serial number AP232760, in a purse located  
hanging on a wall. The purse also contained payments cards in the  
Defendant's name. The purse and firearm were found in the same  
bedroom where Contreras-Aguilar was discovered. The firearm was  
later seized pursuant to the second search warrant.

12 ECF Nos. 44. The parties also stipulated for the Court to decide Naranjo-Cisneros's  
13 motion to suppress without further testimony or argument. *Id.* The Court granted  
14 the parties' request and adopted their proposed stipulation. ECF No. 45.

## 15 DISCUSSION

### 16 A. Motion to Suppress Evidence

17 Naranjo-Cisneros moves to suppress evidence based on a search and seizure  
18 in violation of the Fourth Amendment. ECF Nos. 38, 42. The Government  
19 maintains the warrant sufficiently described the items to be searched for and seized.  
20 ECF No. 40. As a fallback, the Government contends the executing officers had a

1 right to rely on the authorized search warrant in good faith. *Id.* For the reasons  
2 discussed below, this Court concludes the warrant here failed to satisfy the Fourth  
3 Amendment’s particularity requirement, and the Government’s good-faith reliance  
4 argument per se fails. It therefore grants Naranjo-Cisneros’s motion to suppress.

### 5       **1.     Legal Framework**

6       The Fourth Amendment protects “[t]he right of the people to be secure in  
7 their persons, houses, papers, and effects, against unreasonable searches and  
8 seizures.” U.S. Const. amend. IV. That right “shall not be violated, and no Warrants  
9 shall issue, but upon probable cause, supported by Oath or affirmation, and  
10 particularly describing the place to be searched, and the persons or things to be  
11 seized.” *Id.* “The manifest purpose of this particularity requirement was to prevent  
12 general searches.” *Maryland v. Garrison*, 480 U.S. 79, 84 (1987).

13       By limiting the authorization to search to the specific areas and things  
14 for which there is probable cause to search, the requirement ensures that  
15 the search will be carefully tailored to its justifications, and will not  
take on the character of the wide-ranging exploratory searches the  
Framers intended to prohibit.

16 *Id.* Thus, “[i]f the scope of the search exceeds that permitted by the terms of a  
17 validly issued warrant or the character of the relevant exception from the warrant  
18 requirement, the subsequent seizure is unconstitutional.” *Horton v. California*, 496  
19 U.S. 128, 140 (1990); *see also United States v. Becker*, 929 F.2d 442, 446 (9th Cir.  
20 1991) (“A warranted search is unreasonable if it exceeds in scope or intensity the

1 terms of the warrant.”); *Groh v. Ramirez*, 540 U.S. 551, 559 (2004) (“[T]he  
2 presumptive rule against warrantless searches applies with equal force to searches  
3 whose only defect is a lack of particularity.”).

4 The Ninth Circuit emphasizes that valid warrants require “specificity,” and it  
5 engages in a two-part analysis of “particularity” and “breadth.” *United States v. SDI*  
6 *Future Health, Inc.*, 568 F.3d 684, 702 (9th Cir. 2009). “Particularity means that  
7 ‘the warrant must make clear to the executing officer exactly what it is that he or  
8 she is authorized to search for and seize.’” *Id.* (quoting *In re Grand Jury Subpoenas*  
9 *Dated Dec. 10, 1987*, 926 F.2d 847, 857 (9th Cir. 1991)). Breadth means the  
10 warrant’s scope must be limited to the probable cause on which it is based. *SDI*  
11 *Future*, 568 F.3d at 702 (citation omitted). The Ninth Circuit has made clear that  
12 “particularity and overbreadth remain two distinct parts of the evaluation of a  
13 warrant for Fourth Amendment purposes.” *Id.*

14 Evidence obtained in violation of the Fourth Amendment “often requires trial  
15 courts to exclude [the] unlawfully seized evidence in a criminal trial.” *Utah v.*  
16 *Strieff*, 136 S. Ct. 2056, 2061 (2016) (citing *Mapp v. Ohio*, 367 U.S. 643, 655  
17 (1961)). The exclusionary rule applies to “evidence obtained as a direct result of an  
18 illegal search or seizure” and “evidence later discovered and found to be derivative  
19 of an illegality, the so-called fruit of the poisonous tree.” *Id.* (citation and internal  
20 quotation marks omitted). That said, courts have “recognized several exceptions to



1 the rule.” *Id.*

2 One exception involves “good faith reliance.” *SDI Future*, 568 F.3d at 705  
3 (citing *United States v. Leon*, 468 U.S. 897, 925 (1984)). Thus, when “‘police  
4 conduct is pursued in complete good faith, the [exclusionary] rule’s deterrent  
5 function loses much of its force,’” and it need not apply. *Id.* at 706 (alteration added)  
6 (quoting *United States v. Luong*, 470 F.3d 898, 902 (9th Cir. 2006)). The good-faith  
7 reliance exception is an objective test, and “the government bears the burden of  
8 proving that officers relied on the search warrant in an objectively reasonable  
9 manner.” *Id.* (citations and internal quotation marks omitted).

10 In *Leon*, the Supreme Court “identified four situations that *per se* fail to  
11 satisfy the good faith exception.” *United States v. Underwood*, 725 F.3d 1076, 1085  
12 (9th Cir. 2013). “In these situations, ‘the officer will have no reasonable grounds  
13 for believing that the warrant was properly issued.’” *Id.* (quoting *Leon*, 468 U.S. at  
14 922–23).

15 The four situations are: (1) where the affiant recklessly or knowingly  
16 placed false information in the affidavit that misled the issuing judge;  
17 (2) where the judge “wholly abandon[s] his [or her] judicial role”; (3)  
18 where the affidavit is “so lacking in indicia of probable cause as to  
19 render official belief in its existence entirely unreasonable”; and (4)  
20 where the warrant is “so facially deficient—i.e., in failing to  
particularize the place to be searched or the things to be seized—that  
the executing officers cannot reasonably presume it to be valid.”  
*Id.* (quoting *Leon*, 468 U.S. at 922–23). “If any of these four situations apply,”  
courts “‘need not inquire further’ and can conclude that the good faith exception to

1 the exclusionary rule does not apply.” *Id.* (quoting *Luong*, 470 F.3d at 905).

## 2           **2.     Particularity**

3           Naranjo-Cisneros argues the facts and law in *Contreras-Aguilar* apply here  
4 and asks this Court to adopt a similar rationale. ECF No. 38 at 2–3. This Court  
5 agrees.

6           To begin with, the Court agrees with the Government that the search warrant  
7 incorporated the attached affidavit. ECF No. 40 at 6. The Court recognizes that the  
8 affidavit specified that the prerecorded buy money was U.S. currency and included  
9 the buy money’s prerecorded serial numbers. *See generally* ECF No. 40-1 at 1–3.  
10 The Court nevertheless concludes the warrant failed to satisfy the Fourth  
11 Amendment’s particularly requirement.

12           *SDI Future Health* helps explain this issue. *See generally* 568 F.3d 684.  
13 There, the Ninth Circuit had no problem establishing the particularity of the warrant  
14 because “even the most troubling items on the list, such as ‘[r]olodexes, address  
15 books and calendars,’ are particular in that they ‘enable the person conducting the  
16 search reasonably to identify the things authorized to be seized.’” *Id.* (quoting  
17 *United States v. Smith*, 424 F.3d 992, 1004 (9th Cir. 2005)). The court determined,  
18 “The officers could tell from the warrant that, should they happen upon a rolodex,  
19 they should seize it.” *Id.* “Because the warrant was not vague as to what it directed  
20 law enforcement officers to search for and to seize, we are satisfied that it did not

1 lack particularity for Fourth Amendment purposes.” *Id.*

2       This case is unlike *SDI Future Health* on this point. As for the prerecorded  
3 buy money, the warrant did not specify the amount or denominations of the bills  
4 subject to seizure. Had the warrant specified that there were only four \$100 bills  
5 bearing particular serial numbers, it would have properly limited the scope of the  
6 search to only four \$100 bills bearing particular serial numbers. It also would have  
7 informed law enforcement to seize only four \$100 bills bearing particular serial  
8 numbers. *SDI Future Health*, 568 F.3d at 702. Here, law enforcement could not tell  
9 from the warrant which denominations of U.S. currency they should search for and  
10 seize. *See id.*

11       A warrant authorizing a general search for all denominations of U.S. currency  
12 (and requiring officers to review all the U.S. currency found for the correct serial  
13 numbers) was not sufficiently particular because limiting the scope of the search to  
14 only the four \$100 bills bearing the particular serial numbers was not only possible  
15 but easily achievable. *See SDI Future Health*, 568 F.3d at 702 (“Warrants which  
16 describe generic categories of items are not necessarily invalid if a more precise  
17 description of the items subject to seizure is not possible.”) (quoting *United States*  
18 *v. Spilotro*, 800 F.2d 959, 963 (9<sup>th</sup> Cir. 1986)). There was no need to authorize a  
19 search for all denominations of bills because “the government knew exactly what it  
20 needed and wanted.” *See VonderAhe v. Howland*, 508 F.2d 364, 370 (9<sup>th</sup> Cir. 1974).

1 This Court can only surmise that law enforcement omitted the denominations of the  
2 bills from the warrant due to carelessness or to broaden the scope of the search. In  
3 either event, that error rendered the warrant fatally flawed.

4 In determining whether a warrant is sufficiently particular, the Ninth Circuit  
5 has outlined three factors for consideration:

6 (1) whether probable cause exists to seize all items of a particular type  
7 described in the warrant; (2) whether the warrant sets out objective  
8 standards by which executing officers can differentiate items subject to  
9 seizure from those which are not; and (3) whether the government was  
able to describe the items more particularly in light of the information  
available to it at the time the warrant was issued.

10 *United States v. Adjani*, 452 F.3d 1140, 1148 (9th Cir. 2006) (quoting *Spilotro*, 800  
11 F.2d at 963). The factors identified in *Adjani* largely track the precedent recognized  
12 in *SDI Future Health*, 568 F.3d at 702. But for the sake of thoroughness, this Court  
13 will address the *Adjani* factors as well. Here, probable cause did not exist to search  
14 for and to seize all U.S. currency; it existed to search for and to seize only the four  
15 \$100 bills bearing particular serial numbers used to complete the controlled buy.  
16 Law enforcement knew the exact description of the money used in the controlled  
17 buy. Yet the warrant and incorporated affidavit failed to identify the denominations  
18 of bills. While that failure may not have affected the U.S. currency ultimately  
19 subject to seizure (only the four \$100 bills bearing the particular serial numbers),  
20 omitting the denominations of the bills improperly broadened the scope of the

1 *search*. As a result, the warrant broadly authorized a general, exploratory search for  
2 all denominations of U.S. currency to determine whether such currency bore the  
3 correct serial numbers. The Government could have easily described the U.S.  
4 currency subject to seizure more particularly given the information available to it  
5 when the warrant was issued. *See Adjani*, 452 F.3d at 1148. For these reasons, the  
6 Court finds the warrant failed to satisfy the particularity requirement.

7       The same is true for the general authorization allowing for the search and  
8 seizure of “[d]ocuments tending to establish dominion and control of the location to  
9 be search[ed] and of any items seized.” ECF No. 28-1 at 1. This authorization invites  
10 two categories of questions.

11       First, which types of documents should law enforcement be searching for and  
12 seizing to establish dominion and control of the premises? A title? A lease? Mail?  
13 Perhaps identification cards bearing the premises’ address?

14       Second, which types of documents should law enforcement be searching for  
15 and seizing to establish dominion and control of the prerecorded buy money?  
16 Perhaps a paper ledger documenting the drug sale? But what if Contreras-Aguilar  
17 kept an electronic ledger? The warrant appears to authorize the search for  
18 bookkeeping documents, so could law enforcement seize any computers it happened  
19 upon? What about phone records documenting the transaction? Depending on how  
20 one reads the warrant, it seems to authorize the seizure of phones as well.

1 In Washington, the concept of dominion and control generally relates to the  
2 concept of constructive possession:

3 To determine constructive possession a court examines whether, under  
4 the totality of the circumstances, the defendant exercised dominion and  
5 control over the item in question. While the ability to immediately take  
6 actual possession of an item can establish dominion and control, mere  
7 proximity to the item by itself cannot. Factors supporting dominion and  
8 control include ownership of the item and, in some circumstances,  
9 ownership of the premises. But, having dominion and control over the  
10 premises containing the item does not, by itself, prove constructive  
11 possession.

12 *State v. Davis*, 340 P.3d 820, 827 (Wash. 2014) (citations omitted). But the  
13 circumstantial nature of the constructive possession standard begets the vagueness  
14 of the authorization in this warrant, a vagueness which the Fourth Amendment does  
15 not tolerate.

16 The Court disagrees with the Government's arguments about the broad  
17 category of unspecific documents subject to seizure under the dominion and control  
18 authorization. Contrary to the Government's view, a warrant cannot give law  
19 enforcement unfettered discretion (however reasonably executed) to determine  
20 which items are subject to seizure. *See Adjani*, 452 F.3d at 1148; *SDI Future Health*,  
568 F.3d at 702 ("A warrant must . . . give clear instructions to a search team.");  
*accord United States v. Zemlyansky*, 945 F. Supp. 2d 438, 453 (S.D.N.Y. 2013)  
(quoting *United States v. Riley*, 906 F.2d 841, 844 (2d Cir. 1990) ("Courts  
implement the particularity requirement by insisting that warrants not 'leave to the

1 unguided discretion of the officers executing the warrant the decision as to what  
2 items may be seized.”). The warrant at issue provided no “objective standards by  
3 which executing officers [could] differentiate [which dominion and control  
4 documents were] subject to seizure from those which [were] not.” *See Adjani*, 452  
5 F.3d at 1148. The authorization here was not only vague but overbroad. And the  
6 Government could have easily described the dominion and control documents  
7 subject to seizure more particularly given the information available to it when the  
8 warrant was issued. *See id.*

9       In *Spilotro*, for example, the “warrant authorized, among other things, the  
10 seizure of address books, notebooks, notes, documents, records, assets,  
11 photographs, and other items and paraphernalia evidencing violations of the  
12 multiple criminal statutes listed.” 800 F.2d at 964. There, “[t]he government did not  
13 know, or at least did not recite, the precise identity, type, or contents of the records  
14 sought.” *Id.* The Ninth Circuit determined “a more precise description of the items  
15 sought was possible,” and the “warrant should have named or described those  
16 particular items.” *Id.* “For instance, the warrant might have authorized the seizure  
17 of records relating to loan sharking and gambling, including pay and collection  
18 sheets, lists of loan customers, loan accounts and telephone numbers, line sheets,  
19 bet slips, tally sheets, and bottom sheets.” *Id.* (citation and internal quotation marks  
20 omitted).

1        This case is like *Spilotro*. Here, the general authorization allowed for the  
2 search and seizure of “[d]ocuments tending to establish dominion and control of the  
3 location to be search[ed] and of any items seized.” ECF No. 40-1 at 1. As for  
4 documents establishing dominion and control of the premises, the warrant might  
5 have authorized, for example, the seizure of titles, leases, mail, identification cards,  
6 and the like. As for documents establishing dominion and control of the prerecorded  
7 buy money, the warrant might have authorized the seizure of paper or electronic  
8 ledgers documenting the drug sale or phone records documenting the drug sale with  
9 the confidential informant. Like *Spilotro*, 800 F.2d at 964, a more precise  
10 description of the dominion and control documents that law enforcement sought  
11 was possible, and the “warrant should have named or described those particular  
12 items.” *Id.* “By failing to describe with any particularity the [types of documents]  
13 to be seized, the warrant is indistinguishable from the general warrants repeatedly  
14 held by this court to be unconstitutional.” *United States v. Kow*, 58 F.3d 423, 427  
15 (9th Cir. 1995) (alteration added).

16        Here, the warrant authorizes ‘a general, exploratory rummaging’ of the *entire*  
17 house for any documents the officers might think satisfies the constructive  
18 possession standard. *See SDI Future Health*, 568 F.3d at 705. Unlike the Rolodexes,  
19 address books, and calendars in *SDI Future Health*, 568 F.3d at 702, the warrant  
20 here does not identify any specific types of documents. Instead, the warrant gives



1 law enforcement discretion about which documents to search for and seize, and  
2 officers must make a legal determination about whether the particular document  
3 they happen upon “establish[es] dominion and control of the location to be  
4 search[ed] and of any items seized.” ECF No. 28-1 at 1; *cf. SDI Future Health*, 568  
5 F.3d at 702. Again, a more precise description of the documents subject to seizure  
6 was possible. *See SDI Future Health*, 568 F.3d at 702.

7 Because the warrant was vague about the prerecorded buy money and the  
8 documents subject to seizure, this Court concludes it failed to satisfy the Fourth  
9 Amendment’s particularity requirement. *Cf. SDI Future Health*, 568 F.3d at 702.

### 10 **3. Overbreadth**

11 As for overbreadth, a warrant must give law enforcement clear instructions,  
12 and those instructions must not be overbroad. *SDI Future Health*, 568 F.3d at 702.  
13 That means probable cause must exist to seize the particular things named in the  
14 warrant. *Id.* And ““probable cause means a fair probability that contraband or  
15 evidence of a crime will be found in a particular place, based on the totality of  
16 circumstances.”” *Id.* at 703 (quoting *United States v. Diaz*, 491 F.3d 1074, 1078 (9th  
17 Cir. 2007)); *see also Illinois v. Gates*, 462 U.S. 213, 238 (1983) (reaffirming “the  
18 totality-of-the-circumstances analysis that traditionally has informed probable  
19 cause determinations.”).

20 After completing the controlled buy, law enforcement tailed the vehicle

1 driven by Contreras-Aguilar to a home in Warden. ECF No. 28-1. Because  
2 Contreras-Aguilar drove directly to this home, Detective Ledeboer believed there  
3 was probable cause to search the house to recover the prerecorded buy money. *Id.*  
4 The state district court judge found probable cause to believe that:

5 Evidence or fruits of the crime [Violation of the Uniform Controlled  
6 Substances Act]/[Failure to Appear for Driving Under the Influence];  
7 and/or contraband or things otherwise criminally possessed; and/or  
8 weapons or other things by means of which a crime has been or is about  
to be committed, are located within Grant County, Washington, in or  
about the premises, vehicle, or other place, or upon the person of the  
individuals described below[.]<sup>[2]</sup>

9 *Id.* But the state district court failed to analyze the totality of circumstances in any  
10 detail. *See id.*

11 Reviewing courts generally afford “great deference” to a judge’s probable  
12 cause determination. *Leon*, 468 U.S. at 914. But that deference “is not boundless,”  
13 and “reviewing courts will not defer to a warrant based on an affidavit that does  
14 not ‘provide the magistrate with a substantial basis for determining the existence  
15 of probable cause.’” *Id.* at 914–15 (quoting *Gates*, 462 U.S. at 239). “Sufficient  
16 information must be presented to the magistrate to allow that official to determine  
17 probable cause; his action cannot be a mere ratification of the bare conclusions of  
18

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19 <sup>2</sup> Despite the state district court judge’s findings, Detective Ledeboer, who applied  
20 for the search warrant, testified that probable cause did not initially exist to seek a  
warrant authorizing the search and seizure of either firearms or controlled  
substances. Tr. (Dec. 11, 2020).

1 others.” *Id.* at 915 (quoting *Gates*, 462 U.S. at 239). If a judge’s probable cause  
2 determination fails to properly analyze the totality of the circumstances, a  
3 reviewing court may find the warrant invalid. *Id.* Courts must review a warrant  
4 “keeping in mind the warrant’s incorporation of the affidavit.” *SDI Future Health*,  
5 568 F.3d at 702.

6         Given the totality of the circumstances, this Court agrees probable cause  
7 existed to search for and to seize Contreras-Aguilar. But this Court disagrees that  
8 the warrant and attached affidavit established probable cause to search the premises  
9 for the prerecorded buy money and the documents establishing dominion and  
10 control. *But see* ECF No. 40-1. This Court finds the state district court judge merely  
11 ratified the unsupported conclusions of the lead detective in this case. *See Leon*,  
12 468 U.S. at 914.

13         The only link to the residence described in the warrant involves the fact that  
14 Contreras-Aguilar drove there after selling the drugs to the confidential informant.  
15 *See* ECF No. 28-1. Yet the controlled buy happened at a different location.<sup>3</sup> *See id.*  
16 No controlled buys had been performed at this residence. Detective Ledeboer  
17 confirmed that his affidavit did not state that drug dealing was occurring at the

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18  
19 <sup>3</sup> The bare bones nature of the affidavit leaves the Court guessing about many details  
20 that officers likely had at their fingertips. For example, the affidavit recites no facts  
or observations about the location of the controlled buy. The affidavit also recites  
no facts or observations about what Contreras-Aguilar did with the buy money  
immediately after receiving it.

1 residence. Tr. (Dec. 11, 2020). The informant did not notify law enforcement that  
2 Contreras-Aguilar was selling drugs out of the residence. *See* ECF No. 28-1. No  
3 drug transactions had been observed at the residence. *See id.* No criminal activity  
4 or odd behavior had been observed at the residence. *See id.* No evidence established  
5 that Contreras-Aguilar even entered the residence. *See id.* Without more, Contreras-  
6 Aguilar's ostensible presence does not support probable cause to search the house  
7 for money and documents.

8 In truth, “[n]o facts are recited from which it could be inferred that  
9 [Contreras-Aguilar was] other than [a] casual social guest[] at the residence.” *See*  
10 *United States v. Bailey*, 458 F.2d 408, 412 (9th Cir. 1972); *see also Greenstreet v.*  
11 *Cnty. of San Bernardino*, 41 F.3d 1306, 1309 (9th Cir. 1994) (“Merely stating that  
12 [defendant] was surveilled to [a] residence, without any other information as to his  
13 activities [at that residence], ‘is not sufficient to permit an inference’ that  
14 [defendant] was other than a ‘casual social guest’ at [that] residence.”) (alterations  
15 added) (quoting *Bailey*, 458 F.2d at 412).

16 Again, the affidavit makes no connection between criminal activity for which  
17 Contreras-Aguilar was under investigation and the Warden residence besides saying  
18 that officers followed Contreras-Aguilar to the residence after the controlled buy.  
19 *Cf. Greenstreet*, 41 F.3d at 1309–10. Just because probable cause existed to seize  
20 the Contreras-Aguilar from within the residence, that does not mean probable cause

1 existed over the “location to be searched.” *See* ECF No. 40-1 at 1. Contreras-Aguilar  
2 could have been there for many reasons, and the affidavit does not support an  
3 inference that he stashed the controlled buy money in some hidden location within  
4 the house. *See Greenstreet*, 41 F.3d at 1309–10. As this Court may infer that  
5 Contreras-Aguilar was only a “casual social guest,” probable cause existed to seize  
6 him from the residence and to search his person. *See id.* Had the officers not found  
7 the prerecorded money during the search incident to arrest, that may have supported  
8 a reasonable inference (i.e., a fair probability) that the prerecorded buy money was  
9 somewhere else, like the house or the vehicle. As it turned out, the prerecorded buy  
10 money *was* on his person; it was in his wallet. But law enforcement only discovered  
11 the prerecorded buy money after first conducting a general, exploratory search of  
12 the entire house for money and documents.

13       The Government argues nothing requires proof that Contreras-Aguilar lived  
14 at the residence, citing *United States v. Crews*, 502 F.3d 1130, 1137 (9th Cir. 2007)  
15 (finding that the good-faith reliance exception applied and declining to address  
16 whether the affidavit demonstrated that Crews was anything but a casual social  
17 guest)). That may be true, but *Crews* relied on the “good faith” exception to the  
18 probable cause requirement without “embarking on the exercise of determining  
19 whether the affidavit supported probable cause.” *See* 502 F.3d at 1136. “[C]ourts  
20 have discretion in deciding whether to address the issue of probable cause before

1 turning to the issue of good faith reliance.” *Id.* In this case, this Court exercises its  
2 discretion and finds, like *Greenstreet*, that the affidavit did not provide a substantial  
3 basis for the state district court judge’s conclusion that the affidavit supported  
4 probable cause to search residence. *Cf. Greenstreet*, 41 F.3d at 1309 (holding that  
5 the surveillance evidence only permits an inference that defendant was a “casual  
6 social guest” of the residence). Given the bare-bones facts, the totality of  
7 circumstances did not support a fair probability that contraband or evidence of a  
8 crime would be found anywhere other than on Contreras-Aguilar’s person.

9 This Court therefore concludes the warrant was overbroad because probable  
10 cause did not exist to search the house. ECF No. 28-1. True, in executing the search  
11 warrant for Contreras-Aguilar, law enforcement could search the immediate vicinity  
12 of where he was found for safety purposes and seize any guns, drugs, or money in  
13 plain view.<sup>4</sup> But that is not what happened here. The officers searched for and seized  
14 Contreras-Aguilar and then commenced a general, exploratory search of the house  
15  
16

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17 <sup>4</sup> Under the plain view doctrine, another exception to the exclusionary rule involves  
18 “the situation in which the police have a warrant to search a given area for specified  
19 objects, and in the course of the search come across some other article of  
20 incriminating character.” *Horton*, 496 U.S. at 135; *see also United States v. Tamura*,  
694 F.2d 591, 595 n.1 (9th Cir. 1982) (similarly noting that one exception to the  
particularity requirement involves “the seizure of contraband or other incriminating  
evidence found inadvertently during the execution of a search warrant.”).

1 for money and documents.<sup>5</sup> Because this Court finds the warrant failed to establish  
2 probable cause over the “location to be searched,” *see* ECF No. 40-1 at 1, the officers  
3 did not reasonably search for and seize “the firearm alleged in the Indictment  
4 [against Naranjo-Cisneros], a Davis Industries model P-380, .380 caliber pistol,  
5 bearing serial number AP232760, [found] in a purse located hanging on a wall.”  
6 *See* ECF Nos. 44, 45.

#### 7           **4.     Good-Faith Reliance Exception**

8           The Government argues that the officers relied in good faith on the judicially  
9 approved search warrant, so the exclusionary rule should not apply. ECF No. 40.  
10 Naranjo-Cisneros identifies two situations in which the warrant and affidavit here  
11 per se fail to satisfy the good-faith exception, and, as a result, law enforcement had  
12 no reasonable grounds for believing that the warrant was properly issued. *See* ECF  
13 Nos. 38, 41.

14           Naranjo-Cisneros first urges the Court to adopt the rationale it expounded in  
15 *Contreras-Aguilar*, in which this Court concluded the warrant was facially  
16 deficient. *See id.* In the alternative, Naranjo-Cisneros insists the affidavit here was  
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18 <sup>5</sup> On cross-examination, defense counsel asked Officer Mitchell about the dominion  
19 and control authorization in the search warrant: “do you interpret that to mean that  
20 you could search the entire house for documents demonstrating dominion and  
control?” *Id.* He replied, “Wherever dominion and control documents may be  
located, which they could be located anywhere, just the same as US currency could  
be located anywhere.” *Id.*

1 so lacking in indicia of probable cause as to render official belief in its existence  
2 entirely unreasonable. *See id.* Despite the bare-bones facts in the affidavit, because  
3 this Court maintains its rationale regarding facially deficiency, it declines to reach  
4 Naranjo-Cisneros’s alternative theory.

5 As stated above, the Supreme Court has “identified four situations that *per se*  
6 fail to satisfy the good faith exception,” including when “the warrant is ‘so facially  
7 deficient—i.e., in failing to particularize the place to be searched or the things to be  
8 seized—that the executing officers cannot reasonably presume it to be valid.’”  
9 *Underwood*, 725 F.3d at 1085 (quoting *Leon*, 468 U.S. at 923). “Given that the  
10 particularity requirement is set forth in the text of the Constitution, no reasonable  
11 officer could believe that a warrant that plainly did not comply with that  
12 requirement was valid.” *Groh v. Ramirez*, 540 U.S. 551, 563 (2004). The warrant  
13 here plainly did not comply with the particularity requirement—it was both vague  
14 and overbroad. Because this Court finds the warrant here facially deficient and thus  
15 by implication, no objective officer could reasonably presume it to be valid, it  
16 concludes the Government’s argument *per se* fails. *See also United States v. Stubbs*,  
17 873 F.2d 210, 212 (9th Cir. 1989) (holding because the warrant was facially invalid,  
18 law enforcement could not have reasonably relied on it in good faith); *United States*  
19 *v. Washington*, 797 F.2d 1461, 1473 (9th Cir. 1986) (holding because two sections  
20 of the warrant were overbroad, that rendered the warrant so facially deficient that



1 any evidence obtained relying on either of them must be suppressed).

2 The Government directs this Court to *United States v. King*, No. 20-10007,  
3 2021 WL 127828 (9th Cir. Jan. 14, 2021), which cites a few cases discussing the  
4 good-faith reliance standard. But *King* helps the Government little.

5 *King* affirmed the district court's ruling denying defendant's motion to  
6 suppress because it concluded the warrant was supported by probable cause and  
7 was sufficiently particular. *See generally id.* It also held "the good-faith exception .  
8 . . justifies denying the suppression motion here." *Id.* at \*5.

9 First, this Court finds *King* distinguishable. There, law enforcement was  
10 investigating a suspect after a serious domestic-violence incident in which the  
11 suspect pointed an unloaded gun at the victim's head and pulled the trigger, grabbed  
12 a box of ammunition while the victim fled, and then chased the victim down and  
13 struck her face. *Id.* at \*1. The victim provided information to the police about the  
14 suspect and the gun. *Id.* Afterward, law enforcement overheard a jailhouse  
15 conversation in which the suspect essentially told the victim to give the gun to King.  
16 *See id.* at \*2. The victim admitted to law enforcement that she gave the gun to King,  
17 and "described his appearance and phone number, the location of his house, his live-  
18 in girlfriend, and his vehicles." *Id.* Because of King's two prior felonies, law  
19 enforcement determined he was barred from possessing firearms. *Id.* "[O]fficers  
20 observed King's car parked at his residence—the place where the victim said she

1 delivered the firearm.” *Id.* “A judge then authorized the warrant, allowing the search  
2 of King’s home for ‘[a]ny firearm’ and various other firearm-related items.” *Id.*

3 This case is factually more like *Greenstreet*, 41 F.3d at 1309–10, than *King*.  
4 The victim in *King* told police that she delivered the firearm to King’s house—  
5 where he lived. *See id.* Unlike the victim in *King*, the confidential informant here  
6 did not relay any information about the Warden residence to law enforcement. Law  
7 enforcement merely followed Contreras-Aguilar to the residence after the  
8 controlled buy.

9 Turning to the good-faith reliance exception, *King* cites *Kow*, 58 F.3d 423,  
10 *Davis v. United States*, 564 U.S. 229 (2011), and *Leon*, 468 U.S. 897 for the  
11 standards governing the exception. While this Court bases its decision on the  
12 controlling rule emanating from *Leon*, it finds further discussion of *Kow* will prove  
13 useful.

14 “Evidence seized pursuant to a facially valid search warrant which later is  
15 held to be invalid may nevertheless be admissible if officers conducting the search  
16 acted in good faith and in reasonable reliance on the warrant.” *Kow*, 58 F.3d at 428  
17 (citing *Leon*, 468 U.S. at 926). “The government bears the burden of proving that  
18 reliance upon the warrant was objectively reasonable.” *Id.*

19 In *Kow*, “the warrant . . . listed entire categories of documents to be seized,  
20 encompassing essentially all documents on the premises.” *Id.* at 428. The Ninth

1 Circuit noted that it has been “‘vigilant in scrutinizing officers’ good faith reliance  
2 on such illegally overbroad warrants.’” *Id.* (quoting *Ortiz v. Van Auken*, 887 F.2d  
3 1366, 1370 (9th Cir. 1989)). It emphasized, “[t]he warrant in this case is less  
4 particular than the warrant in *Stubbs*, which also authorized seizure of ‘broad classes  
5 of documents without specific description of the items to be seized.’” *Id.* (quoting  
6 *Stubbs*, 873 F.2d at 212). *Kow* held, “Because the warrant in this case was facially  
7 invalid, no reasonable agent could have relied on it absent some exceptional  
8 circumstance.” *Id.* at 428–29 (citation and internal quotation marks omitted). “The  
9 mere fact that the warrant was reviewed by two AUSA’s [sic] and signed by a  
10 magistrate does not amount to ‘exceptional circumstances.’” *Id.* at 429. Further,  
11 “[w]hen a warrant is facially overbroad, absent *specific assurances* from an  
12 impartial judge or magistrate that the defective warrant is valid despite its  
13 overbreadth, a reasonable reliance argument fails.” *Id.* (emphasis in original).

14 This case is like *Kow*. The warrant here authorized the seizure of a broad  
15 category of dominion and control documents without a specific description of the  
16 items to be seized. *See id.* at 428 (discussing *Stubbs*, 873 F.2d at 212). It also  
17 vaguely described the prerecorded buy money subject to seizure when providing  
18 the exact description of the buy money was possible. *See id.* at 427 (“[G]eneric  
19 classifications in a warrant are acceptable only when a more precise description is  
20 not possible.”). Law enforcement here knew exactly what they were looking for.

1 *See VonderAhe*, 508 F.2d at 370. Although a state district court judge signed the  
2 warrant, which the lead detective drafted, that fact does not qualify as exceptional  
3 circumstances. *See Kow*, 58 F.3d at 429. And because the warrant here was facially  
4 overbroad, and there were no *specific assurances* from an impartial judge or  
5 magistrate that the defective warrant was valid despite its overbreadth, the Court  
6 finds the Government has not met its burden of proving that reliance on the warrant  
7 was objectively reasonable. *See id.* at 428. For these reasons, the Government's  
8 good-faith reliance argument fails.

## 9 **5. Remedy**

10 The Ninth Circuit endorses the doctrine of severance, allowing district courts  
11 to exclude evidence that fails to satisfy the Fourth Amendment from evidence  
12 properly searched for and seized. *SDI Future Health*, 568 F.3d at 707. "Total  
13 suppression, on the other hand, is appropriate when a warrant is wholly lacking in  
14 particularity.'" *Id.* (quoting *United States v. Sears*, 411 F.3d 1124, 1129 (9th Cir.  
15 2005)). This Court finds the initial warrant overbroad and wholly lacking in  
16 particularity. As a result, it determines total suppression is the proper remedy and  
17 excludes all the evidence seized pursuant to both warrants as fruit of the poisonous  
18 tree.

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20 //

1 **CONCLUSION**


2 In sum, the warrant and incorporated affidavit violated the Fourth  
3 Amendment's particularity requirement, and Government has not met its burden of  
4 proving good-faith reliance. This Court concludes total suppression is the proper  
5 remedy and excludes all the evidence seized pursuant to both warrants as fruit of  
6 the poisonous tree.

7 Accordingly, **IT IS HEREBY ORDERED:**

8 Defendant Martha Ofelia Naranjo-Cisneros's Motion to Suppress  
9 Evidence Based on a Search & Seizure in Violation of the Fourth  
10 Amendment, **ECF No. 38**, is **GRANTED**.

11 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and  
12 provide copies to all counsel.

13 **DATED** this 11<sup>th</sup> day of February 2021.

14  
15   
16 SALVADOR MENDOZA, JR.  
United States District Judge